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## **AZ Supreme Court sides with League in lawsuit against state**

A decision last year by the state to require local governments to repay \$30 million to the state's general fund has been ruled unconstitutional by the Arizona Supreme Court.

In a unanimous opinion written by Vice Chief Justice Rebecca White Berch, the court sided with the League of Arizona Cities and Towns, which filed a special action lawsuit in November against then-Governor Janet Napolitano and State Treasurer Dean Martin.

The court ruled Feb. 3 that the provision requiring the forced transfer was unconstitutional because it was included in the fiscal 2009 budget bills passed by the Legislature last year. The state's budgetary authority is limited to overseeing appropriations that affect state agencies, institutions and public schools, an argument that was the second major prong in the League's lawsuit.

However, the court rejected the League's argument that the transfer to the state from local governments was essentially a tax hike that would have to be approved by two-thirds of each legislative house to comply with Proposition 108, which was passed in 1992 to set more stringent requirements for raising taxes.

Berch wrote that the provision requiring the transfer identified an "ascertainable sum to be paid," though it failed to identify previous appropriations to cities and towns and therefore did not meet the legal definition of an appropriation.

The court's opinion will allow the state's cities and towns to keep the \$18.3 million demanded by the state. Arizona's 15 counties will keep \$11.4 million, although the counties did not participate in the lawsuit.

Martin agreed with the premise of the League of Arizona Cities and Towns' challenge, while Napolitano sought to defend itself from the lawsuit.

The court rejected the assertion by Napolitano attorney Kim Demarchi that the local governments had waited too long to file the request for special action.

The case did not go through the normal legal channels, skipping trial court and appeals court and heading straight to the state Supreme Court.

**By Christian Palmer** Arizona Capitol Times